

**NATIONAL ADVISORY COUNCIL FOR ENVIRONMENTAL
POLICY AND TECHNOLOGY**

COMPLIANCE ASSISTANCE ADVISORY COMMITTEE

MAXIMIZING COMPLIANCE ASSISTANCE

**RECOMMENDATIONS FOR ENHANCING COMPLIANCE
ASSISTANCE OPPORTUNITIES AT EPA AND
THROUGH OTHER PROVIDERS**

August 13, 2001

EXECUTIVE SUMMARY

In 1994, EPA sought to improve the effectiveness of its compliance monitoring and enforcement operations at headquarters by consolidating these operations into one office—the Office of Enforcement and Compliance Assurance (OECA). A number of Regions implemented similar reorganizations. These reorganizations resulted in changes, both in substance and structure, to EPA's enforcement and compliance assurance program.

The National Advisory Council for Environmental Policy and Technology (NACEPT) Compliance Assistance Advisory Committee (CAAC) was established within the United States Environmental Protection Agency (EPA) under the NACEPT charter approved pursuant to the Federal Advisory Committee Act (FACA) by the Administrator and the General Services Administration. The CAAC consists of representatives from state, tribal and local governments, compliance assistance providers, regulated commercial, industrial and federal facilities and community-based environmental organizations, and provides a multi-stakeholder perspective to EPA regarding compliance assistance issues.

The recommendations contained herein address six key areas that the CAAC believes are essential to the development of a national program of compliance assistance. This program will serve as an effective complement to EPA's approach to traditional inspection and enforcement. At the same time, the CAAC recognizes that enforcement has been, and will continue to be, an essential component of EPA's regulatory programs. As such, advances in compliance assistance must not be made at the expense of enforcement but rather, must be strategically planned for and adequately funded.

Incorporating Compliance Assistance into EPA's Mission, Goals and Strategic Plan

EPA must adopt a broad, holistic approach to environmental assistance, recognizing that compliance assistance is only part of a much larger spectrum of activities for improving environmental performance. EPA's commitment to compliance assistance must be reflected in all aspects of the Agency's strategic planning, from its Mission on down.

Institutionalizing and Implementing Compliance Assistance Throughout EPA

The Office of Compliance (OC) should be recognized as the office having the primary authority to coordinate compliance assistance and other related outreach activities across the entire Agency. In doing so, the office should promote consistent approaches to implementing CA, such as sector and problem-based strategies, and facilitate a continuous exchange of information among all compliance assistance providers.

Addressing Compliance Assistance in the Development of New Regulations

EPA's Program Offices should engage regulated entities and assess their compliance assistance needs as early as possible in the development of all new regulations.

Strengthening the Compliance Assistance Network

EPA should strengthen the ability of State, Tribal and local agencies to provide compliance assistance. EPA should also vigorously facilitate networking among all compliance assistance providers, particularly community-based organizations and environmental justice groups, to ensure that all parties are on a level playing field in understanding environmental regulations.

Developing and Delivering Effective Compliance Assistance Tools

EPA needs to develop a comprehensive approach to the development and deployment of compliance assistance tools. This approach should: (i) engage customers to identify their compliance assistance needs, (ii) include flexible tools that incorporate state-of-the-art technologies/techniques, pollution prevention and beyond compliance, and (iii) ensure that tools are universally accessible through all compliance assistance providers.

Measuring the Effectiveness of Compliance Assistance Efforts

EPA should develop and implement an Agency-wide system for accurately measuring the outputs and environmental outcomes of its compliance assistance activities. By having all EPA Offices and Programs use this system, they will be accountable for reporting their compliance assistance results to the public. EPA should simultaneously place a priority on developing and implementing a complementary voluntary system for States, Tribes and local government agencies to use to report on the outcomes of their compliance assistance activities. The Agency needs to provide adequate funding to States, Tribes and local government agencies to participate in this system. Finally, the Agency should continue to support pilot projects on compliance assistance measurement to inform the development of these national reporting systems.

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INTRODUCTION

Authority

The National Advisory Council for Environmental Policy and Technology (NACEPT) Compliance Assistance Advisory Committee (CAAC) was established within the United States Environmental Protection Agency (EPA) under the NACEPT charter approved pursuant to the Federal Advisory Committee Act (FACA) by the Administrator and the General Services Administration.

In 1994, EPA sought to improve the effectiveness of its compliance monitoring and enforcement operations at headquarters by consolidating these operations into one office—the Office of Enforcement and Compliance Assurance (OECA). A number of Regions implemented similar reorganizations. These reorganizations resulted in changes, both in substance and structure, to EPA's enforcement and compliance assurance program. EPA recently undertook a five-year review to assess how well the reorganization improved its effectiveness. This assessment included soliciting input from EPA's state partners and stakeholders on how EPA can further improve public health and the environment through its compliance assurance efforts.

Charge

The purpose of the CAAC is to create a multi-stakeholder working group that can provide advice to the Administrator (through the NACEPT Council) on the design and implementation of several new projects. The initial work of the CAAC centered on three activities:

1. The development of a Clearinghouse for compliance assistance materials from Federal, state and private sector providers;
2. The development of an annual EPA-wide compliance assistance plan (Action Plan) that will outline EPA's priorities and commitments for compliance assistance activities (first-year plan for Fiscal Year [FY] 2001); and
3. Convening a national forum of compliance assistance providers to share information on compliance assistance activities, provide focused feedback on the Clearinghouse and the Action Plan, and to identify priority areas for compliance assistance activities.

The CAAC conducted open meetings during November 2000, January and May 2001, in Washington, D.C. Working with OECA, the CAAC also convened the second *National Compliance Assistance Providers' Forum 2001* in Annapolis, Maryland during March 2001. More than 300 compliance assistance providers from around the country attended *Forum 2001*, which featured presentations and feedback sessions regarding the recommendations contained in this report.

Status of Prior Year Recommendations

On August 18, 2000 the NACEPT transmitted the CAAC's initial report regarding compliance assistance activities at EPA to the Administrator. The report provided input to EPA on three areas:

1. Comments regarding EPA's FY 2001 Compliance Assistance Activity Plan, including feedback received from stakeholders at the *2000 Compliance Assistance Providers' Forum*.
2. Recommendations for EPA activities to be included in the agency's FY 2002 Compliance Assistance Activity Plan and beyond.
3. Issues that the CAAC intended to study during FY 2001 and report herein.

In response to the August 18, 2000 recommendations, EPA instituted changes in its FY 2001 Compliance Assistance Activity Plan and plan development process, and initiated a number of steps to improve compliance assistance coordination within the agency. These activities were reported to the CAAC in a letter dated May 1, 2001 from Mr. Michael M. Stahl, Acting Principal Deputy Assistant Administrator, OECA. A copy of the letter is provided in Attachment 1.

FY 2001 CAAC ACTIVITIES

Organizational Framework

The recommendations contained herein build on previous ideas developed by the CAAC. They are structured around an organizational framework for helping EPA develop a more robust compliance assistance program that meets the needs of its stakeholders and community members. Compliance assistance helps the agency achieve its vision of a cleaner environment by providing the regulated community with the tools to achieve compliance and, if they choose, go beyond just minimal requirements. Though the CAAC does not suggest that the definition of compliance assistance be changed at this time, EPA's goals and strategies should more actively encourage pollution prevention, use of environmental management systems, and compliance incentives that take facilities beyond compliance.

The organizational framework encompasses six key areas that the EPA must address to optimize its compliance assistance activities.

- Incorporating Compliance Assistance into EPA's Mission, Goals and Strategic Plan
- Institutionalizing and Implementing Compliance Assistance Throughout EPA
- Addressing Compliance Assistance in the Development of New Regulations

- Strengthening the Compliance Assistance Network
- Developing and Delivering Effective Compliance Assistance Tools
- Measuring the Effectiveness of Compliance Assistance Efforts

Incorporating Compliance Assistance into EPA's Mission, Goals and Strategic Plan

Current State

Since the issuance of the Government Performance and Results Act, EPA has placed greater emphasis on goal setting and strategic planning to achieve its mission. As a result, EPA has developed a number of strategic planning tools, including an Agency-wide strategic plan, regional memoranda of agreement and operating plans, and program-specific operating plans. These planning tools set EPA's priorities and determine budget and resource allocations.

Based on the CAAC's understanding of EPA's strategic planning process, input from external stakeholders (e.g., regulated entities and community organizations) is not currently solicited as part of the agency's planning process.

Significance

To truly integrate compliance assistance into every part of EPA's programs, references to compliance assistance must be featured prominently in its planning and budgeting tools. Because these tools are used as the roadmap for future activities and form the basis from which EPA's managers focus resources, the absence of compliance assistance from them means that compliance assistance activities will lack the attention and resources needed to help the Agency achieve its environmental results.

Recommendations

The CAAC has reviewed a number of these planning tools and offers the following recommendations for how compliance assistance could be featured more prominently, thereby becoming more broadly integrated into EPA's activities. In addition, because these tools drive resource allocation, we have provided recommendations that will allow observers to better understand what resources might be needed to ensure that EPA does not just plan for compliance assistance but actually achieves the goals and objectives it sets in this area.

1. EPA must adopt a broad, holistic approach to environmental assistance, recognizing that compliance assistance is part of a much larger spectrum of environmental activities. EPA needs to move beyond the traditional, narrow focus of compliance assistance in favor of a broader approach incorporating all significant elements of environmental assistance, including traditional enforcement, technical assistance, information programs, performance-based environmental man-

agement systems, pollution prevention and small business outreach. EPA should review these issues and draft guidance to regulatory partners and assistance providers regarding available approaches to environmental assistance and how the approaches work together. This recommendation is in no way meant to diminish the importance of required programs regulatory requirements and a strong enforcement program, because compliance assistance efforts are most successful in the presence of these other tools.

2. EPA must make an explicit, agency-wide commitment to compliance assistance in its Strategic Plan. The goals identified by each Program Office should reflect the agency's commitment to compliance assistance. The objectives relative to each Program Office's goals should explicitly identify the measurable outcomes that the Program Office intends to achieve with respect to its compliance assistance activities. EPA should expand Goal 9 in its Strategic Plan to include compliance assistance. The CAAC recommends the following revision: "Goal 9: A credible deterrence *and effective assistance* to comply with the Law *and improve environmental performance.*"
 - Feedback from stakeholders and communities must be more widely sought and incorporated into EPA's planning process. These groups could provide valuable input into whether or not the goals and objectives that EPA sets for compliance assistance are achievable and what compliance incentives are the most appropriate. EPA may choose to use existing advisory committees to obtain this information.
 - Program and Regional operating plans should address how compliance assistance and compliance incentive objectives will be implemented. These plans should acknowledge that compliance assistance and compliance incentives are essential tools that EPA must use to meet its environmental protection mission and describe specific activities and the appropriate funding needed to carry out these activities.
3. EPA should continue to produce its annual Compliance Assistance Activity Plan and should use the information contained in the Plan to identify measurable inputs for assessing the impact of its compliance assistance activities. EPA should ensure that the activities of State and Tribal compliance assistance providers are adequately reflected in the Plan, both to identify duplicative activities and to ensure that all activities are adequately funded. EPA should also develop an agency-wide annual report of compliance assistance activities and accomplishments for agency planning purposes. EPA should use both the Compliance Assistance Activity Plan and the annual activity report to plan and coordinate future compliance assistance activities across EPA Program and Regional Offices, States and Tribes, and to inform interested parties and the public.

Institutionalizing and Implementing Compliance Assistance Throughout EPA

Current State

EPA's business philosophy is transitioning from an approach that places primary emphasis on enforcement of laws and regulatory mandates to one that effectively combines traditional enforcement efforts with technical assistance, information programs, performance-based environmental management systems and pollution prevention efforts. The expectation is that this holistic, results-oriented approach will achieve superior environmental results earlier, more effectively and at lower cost.

Significance

For EPA's compliance assistance program, the implications of this transition are clear. It must augment traditional enforcement efforts with a broader, more sophisticated program to give all stakeholders the tools they need in order to effectively meet regulatory requirements and other environmental objectives. To be most effective, compliance assistance must be grounded on a proper balance between the "carrot" and the "stick." The system should be driven by clearly enunciated regulatory and non-regulatory measures that will attain optimal levels of environmental performance.

Recommendations

The CAAC believes that this balance can best be achieved by considering compliance assistance as a two-way delivery system -- delivering to communities and regulated entities the information needed to effectively control operations, meet legal requirements and achieve performance objectives; and delivering to EPA states and tribes the information needed to tailor programs to meet community and other stakeholder needs. For this system to function efficiently, EPA must implement several institutional elements.

1. EPA senior management should provide specific guidance to all staff levels regarding the essential role that compliance assistance plays in the agency's mission. Specific training on the use of integrated strategies incorporating all forms of environmental assistance should be provided to current staff, and should be incorporated into new employee orientation programs.
2. Designate the Director of the Office of Compliance (OC) within OECA as the agency-wide Environmental Assistance Coordinator. The Director of OC should be given a clear charter and mandate to coordinate all environmental assistance efforts (including but not limited to compliance assistance) across all EPA Program and Regional Offices, States and Tribes, and to proactively engage regulated entities and affected communities to identify environmental assistance needs. Additionally, EPA's Program Offices and Regions should each plan and be held accountable for accurately measuring and reporting the success of their compliance assistance activities. Compliance assistance activities and the resources allocated to them should be clearly identified by each Program Office and Region. To accomplish this, each Program and Regional Office should designate an Environmental Assistance Coordinator. These coordinators should re-

port the environmental assistance activities of their respective offices directly to the Director of OC and should be tasked with ensuring that environmental assistance information is exchanged among EPA, States and Tribes so that efforts are coordinated and not duplicated, ensuring resources are used as efficiently as possible, and obtaining end-user feedback sufficient to identify successful environmental assistance strategies and activities.

3. Encourage sector-based and problem-based approaches to compliance. EPA should facilitate development of sector-specific databases and compliance assistance materials, including performance benchmarking and cataloguing of environmental “best practices,” and work to provide understandable information regarding performance requirements and expectations to entities in the sector and to affected communities. EPA should collect and analyze information on emerging environmental risks and compliance problems to determine whether sector-based or problem-based compliance assistance approaches are appropriate. To best utilize the resources of existing EPA infrastructure, the agency should develop a compendium of types of environmental assistance services and programs currently being provided along with an examination of how they work together. EPA should evaluate sector-specific compliance efforts, including the Compliance Assistance Centers, to ensure that there is adequate funding and staffing to carry out their missions.
4. Develop integrated targeting strategies that incorporate all environmental assistance approaches. EPA should analyze environmental compliance data and other available information and develop criteria to determine whether particular sectors (or facilities) should be targeted for compliance assistance. The CAAC has developed a model that describes how various environmental assistance approaches might be integrated in a systematic way. It is included as Attachment 2.
5. EPA should develop operational guidance defining the Agency’s role as a compliance assistance “wholesaler,” and the roles of States, Tribes, communities and private sector providers as “retailers” in the compliance assistance network. The guidance should also identify those circumstances when it is appropriate for EPA to maintain a “retailer” role (e.g., federal-only regulations, non-delegated programs, federal facilities).
6. The Compliance Assistance Clearinghouse should continue to be the focal point for compiling information and should be expanded to include other Federal, State, Tribal and private sector compliance assistance information, to the extent practical. It also should be expanded to include all proposed and in-progress compliance activities with anticipated completion dates.

Addressing Compliance Assistance in the Development of New Regulations

Significance

The most effective approach for EPA to ensure that appropriate and effective compliance assistance tools are developed and delivered for new regulations is to incorporate the compliance assistance needs evaluation into the regulatory development process.

Current State

EPA operates a well-defined process through which most new regulations are developed. The development process for new regulations is depicted in the following chart entitled Regulatory Development Process. Within the process, the critical activities may be described as follows:

1. Working Group develops Analytic Blueprint for regulatory development, including:
 - Risk analysis
 - Economic analysis
 - Statutory and Executive Order requirements
2. Working Group collects relevant data, analyzes data, and develops regulatory options.
3. Working Group prepares Action Memorandum, Preamble, Rule and Supporting documents

Alternatively, new regulations may be developed through a process of negotiated rule-making, where those entities potentially subject to a new regulation actively work with EPA in the development of the regulation.

The CAAC's review of these processes revealed that compliance assistance is not explicitly addressed at any point in the current regulatory development process. We recognize that economic analyses relative to a new regulation often consider the costs to the regulated community for attaining compliance with the proposed regulation; however the methods by which compliance assistance can and should be delivered to the regulated community are generally not contemplated until the regulation is finalized and adopted.

Recommended State

EPA has fully incorporated environmental assistance into the regulatory development process to more accurately assess the true cost of new regulations, to ensure implementation of effective compliance assistance plans and to facilitate the most efficient compliance efforts among regulated entities.

Recommendations

The CAAC recommends that EPA incorporate three specific compliance assistance-related actions into the regulatory development process:

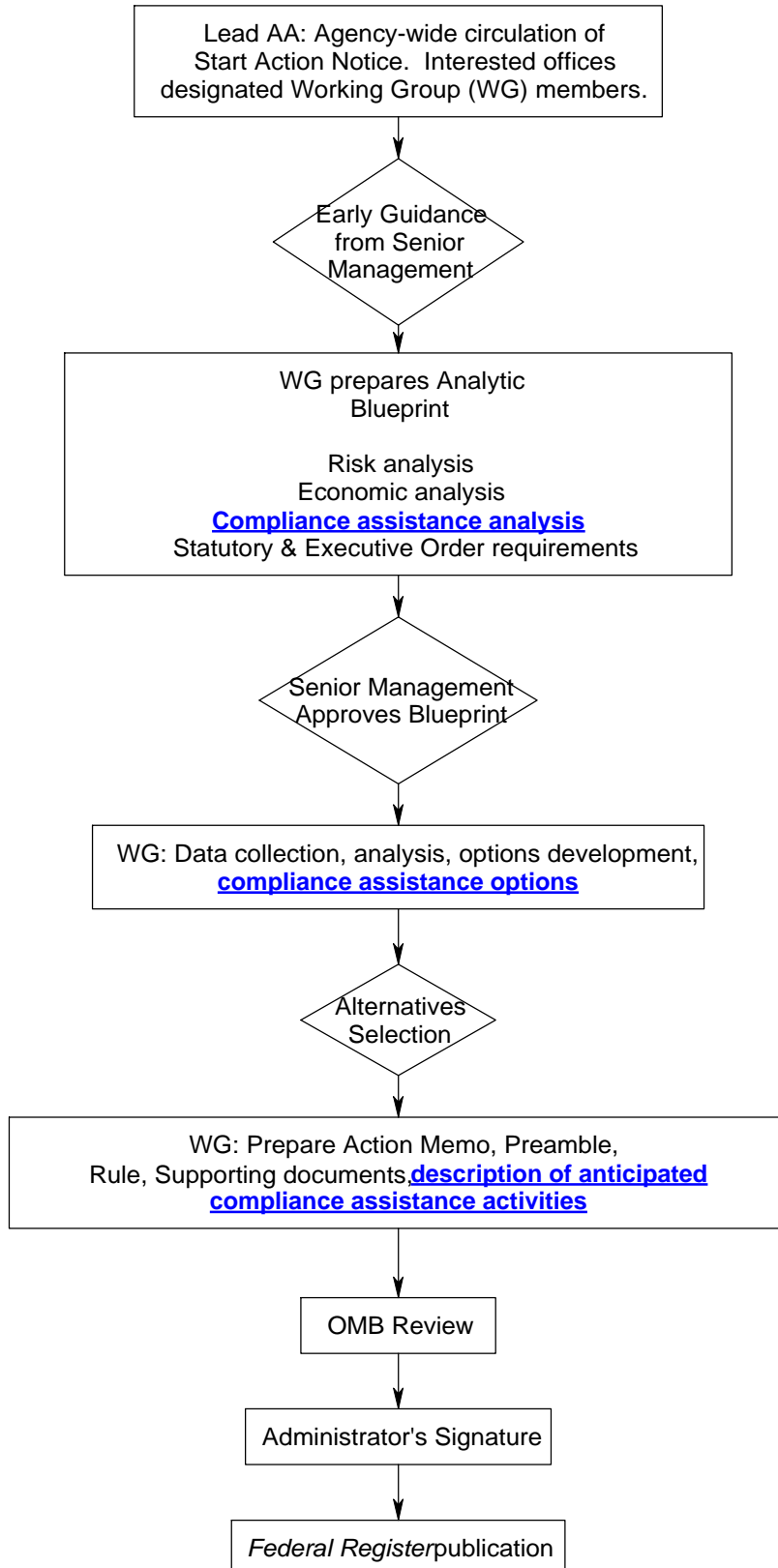
1. In the Analytic Blueprint for each new regulation, EPA should include a compliance assistance analysis. Prior to convening the Working Group for the purposes of data collection, data analysis and options selection, Senior Management from the Program Office proposing the regulation should be required to review and approve the compliance assistance analysis.

In an ideal world, EPA would be expected to develop and deliver new, rule-specific compliance assistance tools for each new regulation. However, the CAAC recognizes that not all regulations require the same level of compliance assistance. EPA has already committed to assessing compliance assistance needs and developing compliance assistance tools under the Small Business Regulatory Flexibility and Relief Act and for economically significant regulations. EPA should consider the following additional factors when assessing compliance assistance needs for new regulations:

- **Regulated Community** – Does the proposed rule impact a small number of regulated entities that are reasonably expected to be familiar with the regulatory environment and/or have access to existing compliance assistance resources, or does the rule impact a larger number of entities with varying degrees of prior regulatory experience and access to compliance assistance resources?
- **Regulatory Complexity / Novelty** – Is the proposed rule concise and easily understood by the regulated community? Does the proposed rule mirror existing, familiar regulatory approaches, or does it embody new or novel concepts to which existing compliance assistance concepts or activities are inappropriate or ineffective?
- **Financial Capacity of Regulated Community** – While EPA already analyzes the compliance costs of proposed regulations and their impacts on the economic health of the regulated community, EPA does not presently identify and facilitate access to avenues for addressing financial capacity barriers to compliance activities.
- **Capacity and Willingness of Regulated Communities and Others to Develop CA Tools** – In many cases, the regulated community will have the ability and be willing to assist EPA in developing compliance assistance tools. Given that regulated communities best understand the processes and activities subject to a rule, their expertise should be tapped where available. Guidance should be provided to enable unions and other members of the public to participate if interested. This could also reduce substantially EPA's cost of developing tools.

2. As an integral part of its activities, the Working Group should be required to perform an assessment of the compliance assistance needs associated with the various regulatory options, including an assessment of the resources needed for implementation. Where compliance assistance needs are identified, EPA should develop compliance assistance tools concurrent with regulatory development. Where a new regulation is developed under the negotiated rulemaking process, EPA and the regulated community should include the compliance assistance assessment in the initial steps of negotiation.
3. In preparing the Rule for *Federal Register* publication, the Working Group should be required to include a description of the compliance assistance tools that will be developed for the selected regulatory option. If no tools are to be developed, the *Federal Register* notice should include a discussion of why EPA determined that compliance assistance tools were not required for the regulation. Tools should be developed and delivered within 90 days of the effective rule date. Where EPA establishes a dedicated compliance period prior to the final compliance date for a regulation, EPA, states and tribes should proactively engage regulated entities through delivery of compliance assistance. Failure of a regulated entity to avail itself of available compliance assistance during this period should be considered a potentially aggravating factor in determining appropriate remedies in a subsequent enforcement action, where such noncompliance could clearly have been avoided through the compliance assistance offered to the regulated entity.

Regulatory Development Process



Strengthening the Compliance Assistance Network

Significance

To maximize the effectiveness of compliance assistance activities, it is important that all stakeholders share an understanding of why a regulation or rule is important, exactly what is required, when and where action is expected, and how much it will cost to implement. Each constituency affected by environmental regulations, including regulated parties as well as the people who are impacted by their activities, has a role to play in enhancing compliance assistance, and environmental performance in general.

Current State

Compliance assistance today is developed and delivered by a wide range of organizations, ranging from federal, state and tribal environmental regulatory agencies to regulated entities and their voluntary associations, and private sector consultants. Some of these stakeholders bring a great deal of expertise to the table. Others bring unique perspectives. Among the participants in the “compliance assistance network” there is a great deal of variability in resources and experience.

Though the residents of affected communities frequently play a role in enforcing environmental regulations, they rarely take part in compliance assistance programs.

Recommended State

The compliance assistance network provides a level playing field, in which all stakeholders participate. In particular, representatives of affected communities – particularly environmental justice communities – are provided assistance to play an effective, constructive role in the design and conduct of compliance assistance programs.

Recommendations

1. EPA should continue to support the development and delivery of training tools to ensure that all stakeholders understand regulations and their enabling statutes, have access to information systems, and are aware of the technologies and management systems needed to provide environmental assistance. EPA should work with other stakeholders to create venues (workshops, forums, etc.) that put different constituencies on the same page. If necessary, representatives of groups that traditionally have not been able to participate in such training events should be eligible for logistical support.
2. EPA should strengthen the ability of State, Tribal and local agencies to provide compliance assistance. In order to provide effective compliance assistance to the regulated community state and local agencies need additional support and resources. This includes base funding and tasks specifically for compliance assistance in media core grants and other funding sources to state and local pro-

grams. Another important area is better networking opportunities and communications between assistance providers, regulatory programs and EPA.

3. Compliance assistance communications mechanisms should better target constituencies that have not traditionally participated in compliance assistance activities. For example, EPA's Compliance Assistance Clearinghouse should open an "affected communities portal" to provide community members with easily understood compliance information regarding federal regulations, informational sources for accessing State, Tribal and/or local environmental regulations, and a "roadmap" for accessing information on current compliance assistance activities within their communities.
4. EPA should promote the role of community-based organizations, including environmental justice groups, in the provision of compliance assistance by sponsoring pilot community-based compliance assistance projects. Such pilots should be coordinated with EPA's Office of Environmental Justice and may include training, logistical support, and the provision of independent technical assistance - that is, the funding of technical experts hired and directed by the community groups - to communities that seek to play a constructive role in the achievement of compliance and other improvements in environmental performance in their communities.

Developing and Delivering Effective Compliance Assistance Tools

Significance

A successful compliance assistance effort is dependent on the development and delivery of high quality and effective tools.

Current State

EPA develops a wide assortment of compliance assistance tools as shown in the FY-01 Activity Plan. However, the current system of compliance assistance tool development is rather chaotic. There is no agency-wide cross-media policy on when materials should be developed, who should develop them, how they should be developed, what should be developed or how they are to be delivered. Finally, funds for development and delivery of the needed materials are limited.

State and Tribal programs in some ways mirror the federal model. Federal directives and funds are mainly single-media focused and address permitting and enforcement. There are no real incentives given for compliance assistance development and delivery. Thus there is limited emphasis on the development of compliance assistance tools and their effective delivery.

Examples of Compliance Assistance tools

Fact sheets	Videoconferences
Manuals and Guidance Documents (hard and electronic – CD/Web)	Web sites
E-mail lists and discussion boards	Library of technical information
Training videos and CD's	Educational materials/curriculums
On-site training	Newsletters
Technology demonstrations	Mentoring
Technology development and verification	Councils/workgroups
One-on-one assistance	Check-lists
Workshops	Environmental Management System training
Expert Systems	Compliance audits
Incentive programs	SEP's / negotiated agreements
Conferences	Partnerships

Recommended State

EPA will have developed a systematic approach to the development and deployment of compliance assistance coordinated between OECA, Program and Regional Offices, States and Tribes, pollution prevention and small business assistance providers. This approach will use a standard process to identify the needs of the customers, develop appropriate tools and ensure effective delivery mechanisms. All tools address pollution

prevention and beyond compliance approaches. Delivery systems through States and Tribes are in place, working with a variety of stakeholders, to ensure that the materials are delivered in an effective manner. Tool design and delivery continue to be innovative and use state-of-the-art technologies and techniques, yet provide easy access to all end users of the service.

Recommendations

1. EPA should establish a systematic approach to the development of compliance assistance tools. This effort must be coordinated between OECA, Program and Regional Offices, States and Tribes, and all interested stakeholders. Within EPA, the effort should draw on the resources, on-going activities and expertise of the media programs, OPPTS, OPEI and ORD. It must use a standard process to identify the needs of the customers and develop appropriate tools. A two-step process is summarized below:

- a. Pre-design phase

This phase will ensure that an effective and efficient process is undertaken. The following steps are critical and required prior to any tool development:

- i) Identity and state very specifically the intended outcomes of the prospective tool.
- ii) Establish an advisory group made up of affected stakeholders and obtain their partnership in designing any prospective tools.
- iii) Spend adequate time identifying and documenting existing tools or those currently under development. Work with the advisory group to see if any of these tools meet their needs and the outcomes identified in step 1. If so, make any necessary updates or modifications and distribute these tools. If not, use the information collected as input to the next phase.

- b. Design and Development phase

- i) Information collection

A protocol must be developed to identify and characterize end users. Input from the advisory group should be utilized. This will allow effective tools to be developed and delivered. This protocol should use broad sampling techniques to:

- Identify the financial resources, technical ability and demographics of the end user community
- Develop an understanding of the motivation and driver for the users
- Establish the important environmental impacts

- Understand the language of the end users
- Identify community and regional needs

This effort should be coordinated across all media program areas.

ii) Prioritize end user needs

An end user-focused process must be established that develops tools that have high environmental impact and are also most likely to be utilized. The process should categorize users and their needs based on the information collected in step 1.

iii) Categorize users

- Identify users with the highest level of technical need, those having limited resources, and the ones most likely to use tools.
- Work with users, through the advisory group to identify the type of tool and the format and delivery mechanism that would be most effective. This could vary within the user group.
- Identify local community needs.

iv) Categorize users' assistance needs

- Identify the compliance problems and significant environmental impacts of the user community.
- Identify areas that, if addressed, will have the greatest environmental impact.
- Prioritize the areas for tool development that have the most impact.

v) Develop Compliance Assistance Tools

The analysis performed in step 2 along with input from both compliance assistance providers and end users will ensure the development of effective compliance assistance tools. Any development must be coordinated across the entire compliance assistance community and across regulatory media programs. Because the level of expertise of both providers and end users should determine the type and format of the tools, different types and formats may have to be developed. The tools should take advantage of the latest technologies; yet keep the needs of the users in mind.

vi) Compliance assistance design principles

- User considerations

The tools must be simple, easy to understand, address user problems, provide adequate guidance and solutions, and give sources for further assistance. The tool must be in a form that meets the needs of the us-

ers. When possible the tools should use the vocabulary of the user community. They must be in a form that can be easily accessed and used. A series of tools may be used to address a range of problem areas or levels of sophistication.

- Retailer considerations

The tools must be flexible, easy to modify or amend, cost effective to duplicate or distribute, and convenient to deliver. The training needs for tool delivery must be identified and if possible minimized through good design. The ease and resources needed to deliver the tool must be kept in mind during development.

- Design considerations

The tools must address “beyond compliance” approaches including pollution prevention. They should have multiple uses to minimize other development costs. They should exist in a broad range of formats tailored to the user community including training, fact sheets, manuals, Web-based, etc. Consider cost of development and implementation during early development stages. Provide training and guidance for community access and use. Consider local and regional sensitivity during tool selection and development.

c. Quality Assurance and Quality Control

A quality assurance and quality control program needs to exist to ensure that tools are effective and easily used, address the needs of the user and provider community, and contain accurate material. Compliance assistance coordinators must assure adequate legal review. The tools must be field-tested and, if necessary, modified prior to release. A process must be developed to update and correct the tools. Resources must be made available to implement this process.

2. EPA should establish a system to ensure all tools are easily available, accurate, replicable and delivered in an effective manner. The tools should also be available on the Internet. Recommendations on who will distribute the tools, how they will be delivered and quality assurance are given below:

a. Who will distribute the tools

The State or Tribal regulatory agencies and/or compliance assistance providers act as both “wholesalers” and “retailers” of compliance assistance information developed by EPA. These include regulatory programs, pollution prevention programs, small business ombudsmen programs, and other compliance assistance agencies. They may directly deliver the materials to the regulated community or deliver them through a wide range of

public and private organizations, such as local agencies, trade associations, universities, business groups, vendors, consultants, citizen groups and environmental organizations.

A plan must be put into place to make the different organizations aware of the availability of the tools. This must be an ongoing effort to ensure the organizations are aware of all available tools.

b. How the tool will be delivered

A plan for the most effective tool delivery approach must be developed based on the user community and assistance providers. Some items this plan should address includes:

- Effective and efficient marketing tool availability
- Training and technical support for assistance providers
- Resource and funding support for tool delivery
- Identification of the most effective distribution organizations and providing them with the tool.

c. Quality assurance

An aggressive quality assurance program must exist to ensure the tools are effective, delivered in a timely fashion, and contain accurate material. This program must receive feedback from both the provider and user community, and have a process to update and correct the tools. Resources must be made available to implement this process.

Measuring the Effectiveness of Compliance Assistance Efforts

There are currently four levels of data/measurement on compliance assistance activities that are important to track and communicate:

- Data on program inputs, including staffing and funding resources dedicated to assistance
- Data on program activities or outputs, including the number of entities reached by assistance providers through workshops, publications, on-site assistance and other activities
- Data on the behavioral and compliance-related outcomes of those activities
- Data on the environmental impacts of compliance assistance activities

Significance

Measuring the results of compliance assistance is important for a number of reasons:

- It provides the justification for targeting program resources
- It helps programs to identify the best, most cost effective methods for delivering compliance assistance
- It enables compliance assistance providers to determine the extent to which their activities are helping entities make environmental improvements

Current State

Compliance assistance is a relatively new activity at EPA. As a result, measuring its effectiveness is in its infancy and presents new challenges. EPA has a system to track its compliance assistance activities, called the Reporting Compliance Assistance Tracking System (RCATS). RCATS has historically tracked OECA and related regional activities but has not included compliance assistance activities of EPA program offices. EPA has upgraded RCATS to incorporate some outcome measures in FY01 and is integrating RCATs into its Integrated Compliance Information System (ICIS).

Although RCATs is beginning to store outcome measurement information, there is currently no comprehensive and cohesive system for measuring the results of compliance assistance activities that are underway at EPA and in the States. There are a number of pilots and other efforts underway in Regions and States to test various measurement approaches. However, there is currently no consistency in the measures that are being utilized by assistance providers around the country.

Measuring compliance assistance activities requires funding. Currently, there is not adequate funding available within EPA and for States, Tribes and local governments for those entities to implement their compliance assistance activities and to measure the outcome of those efforts.

EPA provides some grant and contract support to states, tribal entities and local government agencies to support compliance assistance measurement activities. Entities

that receive these grants report to their project officers on the activities they conducted with the funds. However, there is no system available to aggregate these reports on these federally funded projects. Many of these grants/contracts are awarded in relatively small amounts (less than \$75,000 per year). In general there is not adequate funding available in such small awards to ask entities to provide data on the outcomes of those activities.

Recommended State

EPA will have developed an effective Agency-wide system for accurately measuring the outputs and outcomes of its compliance assistance activities. EPA will have also implemented a complementary and compatible voluntary national system for tracking the outputs and outcomes of environmental assistance activities conducted by states, tribes and local governments. EPA will have provided adequate funding for the ongoing development, implementation, and improvement of these systems. EPA is able to aggregate the data from its internal system and the voluntary national system and provide public reports on the outcomes of compliance assistance activities in the U.S.

Recommendations

1. OECA should develop and implement an Agency-wide system for accurately measuring compliance assistance performance across all EPA programs. As a first step, OECA should assess whether RCATS will meet EPA's future needs with regard to measuring compliance assistance performance. If necessary, the Office of Environmental Information should provide technical resources and funding for improvements to RCATS to serve as the agency-wide compliance assistance measurement system, or develop and implement a suitable alternative data management system. OECA and Program and Regional Offices should report all compliance assistance activities in the Agency-wide reporting system. Each Office should plan, fund and be held accountable for reporting its respective compliance assistance activities in the reporting system. In the near term, OECA, and Program and Regional Offices should identify all anticipated compliance assistance activities in the Annual Compliance Assistance Activity Plan and use the Plan to identify input to the EPA's compliance assistance measurement system.

To enable EPA to more effectively collect compliance assistance outcome data, the agency should strive to eliminate any barriers that inhibit the collection of data measuring the effectiveness of compliance assistance activities. A key external barrier to this data collection includes Office of Management and Budget Information Collection Request requirements under the Paperwork Reduction Act. Furthermore, the Agency should examine some of the internal and institutional barriers within EPA to collecting systematic measurement data, including the lack of commitment on the part of Program and/or Regional Offices, communication barriers between Offices, and data incompatibility between data management systems used by the various EPA offices.

- 2 EPA should place a high priority on the development of a voluntary national compliance assistance providers' measurement collection system for States, Tribes, local government and private sector providers that complements and is compatible with its Agency-wide internal measurement system. The software used for this national voluntary system may or may not be same as the system that EPA develops for the new version of RCATS/ICIS. The Agency needs to evaluate whether there should be one national reporting system that combines EPA and State/Tribal/local government/private sector data or two separate systems that address the different measurement and data needs of the various levels of providers. If the Agency finds that there is a need to develop a separate data management system for State/Tribal/local government and private sector reporting, at a minimum, this system should be designed so that it complements EPA's internal data system and allows the Agency to develop a single, national report that aggregates data from both systems.

The national voluntary system for States/Tribes/local governments and the private sector should make available an "easy to use" system for providers to voluntarily input compliance assistance measures information. EPA's compliance assistance tracking system or the National Compliance Assistance Clearinghouse should be considered as a foundation for a compliance assistance measures collection system.

The national system should ensure that compliance assistance activity results are shared with all stakeholders, including Congress, policy makers, businesses, assistance providers, and community groups.

Collecting reliable and useful performance and environmental outcome measurement data is challenging and requires ongoing efforts in the Agency. EPA should develop and make available a menu of environmental, public health, and compliance assistance outcome measures. The National Compliance Assistance Clearinghouse should be considered as a mechanism to share the "measures menu" with compliance assistance providers, businesses and communities. To start this effort, EPA should examine examples of existing compliance and environmental data reporting systems in the States, Tribes and other government entities to understand their applicability for measuring compliance assistance outcomes on a national level.

- a. Where compliance assistance is provided to a regulated entity, a request should be made for that entity to provide follow-up information to the compliance assistance provider regarding resulting impacts on environmental performance (e.g., waste/emissions/discharge reductions).
- b. Recipients of EPA funding should be held accountable for demonstrating the effectiveness of their compliance assistance activities. For small EPA grants and contracts (those under \$75,000 per year), EPA should create a simple and easy to use system that EPA Project Officers can implement with their grantees that could enable EPA to provide some useful data on those projects to the national voluntary measurement system. Compliance assistance

contracts, cooperative agreements and grants over \$75,000 per year of EPA funding should include requirements for measuring and reporting the effectiveness of such activities to the national system. The CAAC believes that recipients of awards over \$75,000 per year would have some capacity to build into these projects an effective way to report to the national system. The measurements used by the funding recipients can include quantitative and subjective elements, but must be of sufficient detail to capture the true effectiveness of the compliance assistance activity.

3. EPA should continue to test systems and approaches for assessing the impact of compliance assistance. These case studies should be designed to assess whether compliance assistance is effective in bringing about compliance and/or environmental improvements at the targeted entities.

Pilot programs should test approaches for facilitating reporting of compliance assistance outcome data by both compliance assistance providers and regulated entities.

EPA has already funded a number of pilot projects in Regions and States to develop and test compliance assistance measurement tools, techniques, and systems. The agency should evaluate those projects to identify those that can be implemented in other parts of the country. The agency should compile and present the lessons learned from these pilots.

EPA's "Guide For Measuring Compliance Assistance Outcomes" should be used by those implementing the pilot projects and the survey tools covered in the Guide should be tested in those projects. Additionally, the Guide should be augmented to more fully address the spectrum of compliance assistance measures, particularly outcome measures. Currently, the document provides valuable guidance on developing and implementing surveys to evaluate specific compliance assistance projects (e.g., workshops, documents, on-site visits). The document should be updated to include, at a minimum, guidance on assessing the outcomes of compliance assistance programs and on developing surveys that collect statistically relevant data.

EPA should also develop guidance for compliance assistance providers on available and effective methods for tracking and measuring compliance assistance workshops, web site tools, on-site assistance and other techniques.

4. Accurate compliance assurance data must be available in a comprehensive, coherent and end-user-friendly format. This data is critical to measuring compliance and compliance assistance outcomes, and is vital for sector targeting strategies. EPA should ensure that the data collected (e.g., inspections, enforcement activities, Standard Industrial Classification codes, Toxic Release Inventory data) are consistent, complete and accurate.

FUTURE CAAC ACTIVITIES

With the completion of this report, the CAAC recognizes that its role in advising EPA will naturally shift from theory to practice, and that the CAAC's future activities should focus on implementation of the recommendations contained herein. Following this shift, the CAAC proposes to address the following activities over the next year:

- Facilitate implementation of the CAAC's recommendations. The recommendations contained herein will require substantive action on the part of EPA for full implementation. The CAAC intends to actively facilitate EPA's implementation of its recommendations, and to provide additional comment and/or clarification of its recommendations as may be sought by EPA.
- Act as an issues forum/advisory board regarding compliance assistance implementation across EPA. As in any large organization, EPA is expected to experience "growing pains" as the agency moves forward with implementation of the CAAC's recommendations and its own compliance assistance initiatives. Because of its diverse stakeholder representation and independence from EPA, the CAAC can serve as an informed but neutral forum/advisory board to which EPA can turn for advice in addressing issues related to compliance assistance.
- Assist EPA in planning and hosting the 2002 Compliance Assistance Providers' Forum. Following up on the success of the 2000 and 2001 Compliance Assistance Providers' Forum, the CAAC strongly urges EPA to continue to host this invaluable information exchange opportunity for compliance assistance providers. While the first two forums focused on engaging providers within EPA and in the States and Tribes, the business of delivering quality compliance assistance to end-users lies primarily with "retail" providers, including industry trade associations and private sector consultants. The CAAC will assist EPA in identifying and encouraging these additional providers in the 2002 Compliance Assistance Providers' Forum, and in ensuring that the forum content addresses their needs.
- Assist EPA in assessing the current state of compliance assistance performance measurement and the design and testing of performance measurement pilot projects to demonstrate the effectiveness of compliance assistance activities. Very clearly, EPA needs to proceed expeditiously with the development and implementation of performance measurement systems that demonstrate the effectiveness of compliance assistance activities. The CAAC has recommended in this report that EPA examine the state of its current performance measurement capabilities and those of State, Tribal, local government and other compliance assistance providers, and develop a long-range plan to implement a comprehensive, nationwide performance measurement system. The CAAC is planning to work with EPA on the following additional activities:
 - Assess whether RCATS/ICIS can meet EPA's future needs with regard to measuring compliance assistance performance, particularly the outcomes of the Agency's compliance assistance activities. The CAAC will advise EPA on the

trade associations and private sector consultants), to identify gaps in the compliance assistance “retailer” network.

- Gathering and providing feedback from end-users (regulated entities) to assess (1) network utilization, (2) assistance delivery gaps, (3) product quality and usefulness and (4) future compliance assistance needs.

- Assisting EPA in engaging compliance assistance providers to address service gaps identified through this interactive process.
- Encourage and facilitate the assessment of compliance assistance capabilities of other Federal agencies (e.g., United States Department of Agriculture, Department of Commerce, Nuclear Regulatory Commission, Small Business Administration) to complement and enhance EPA's compliance assistance activities. Other Federal agencies play key roles in providing technical assistance to entities regulated under their programs. Through coordination with EPA, the technical assistance networks of these other agencies could be mobilized as additional delivery systems for compliance assistance. In addition to assessing delivery capabilities of these other agencies, the CAAC would assist EPA in identifying institutional barriers that may impair use of these alternative delivery systems.
- Assist EPA in promoting compliance assistance with community-based organizations including an EPA-sponsored pilot project. EPA needs to work with communities that seek to play a constructive role in the achievement of compliance by providing training and logistical support and funding technical assistance directed by community groups. The CAAC would assist EPA in developing design specifications and criteria for evaluating and selecting a community-based compliance assistance pilot project proposal for implementation and/or funding.

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Attachment 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460

MAY 1, 2001

Mr. Richard C. Sustich
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Metropolitan Water Reclamation District of Greater Chicago
111 East Erie Street
Chicago, IL 60611

Mr. Richard Desanti
Co-Chair, Compliance Assistance Advisory Committee Mobil Business Resources Corporation
3225 Gallows Road 2D2106
Fairfax, VA 22037

Dear Messrs. Sustich and Desanti.

On August 18, 2000, the National Advisory Council for Environmental Policy and Technology (NACEPT) provided the EPA Administrator with a series of recommendations on how to improve certain aspects of the Agency's compliance assistance program. These recommendations, which were developed by the NACEPT Compliance Assistance Advisory Committee (CAAC), have been very helpful to the agency and we especially appreciate the thought and effort that went into developing them. At the January 2001 CAAC meeting, Bruce Weddle provided a brief update of what we have been doing in response to the recommendations. At this point, I thought it would be helpful to provide you and the committee with a more complete response to each of your major recommendations.

1. **Institutionalize the Compliance Assistance Activity Plan (the Plan) within all EPA program offices and regions..**

A number of steps have been taken to improve coordination within the Agency, thereby improving the quality and comprehensiveness of the Plan's inventory. We also have been working to strengthen the Plan's use as a strategic planning tool. To help ensure the accuracy of the final FY 2001 (FY 01) Plan, in December 2000, the Office of Enforcement and Compliance Assurance (OECA) formally requested all relevant EPA headquarters and regional offices to update and revise their compliance assistance project inventories following receipt of the Agency's final FYOI appropriations. This resulted in a net increase of 69 projects and improved data quality on the already-identified projects. To further improve the quality of future Plans, EPA's March

2001 National Compliance Assistance Providers Forum hosted separate breakout sessions for each major headquarters media program office and each regional office in order to solicit stakeholder feedback on FY 2002 (FY 02) Agency priorities. In addition, the schedule for development of the FY 02 Plan has been adjusted so that it is now more closely aligned with the Agency's FY 02 planning and budgeting process. OECA also has expanded the Agency work-group that develops the Plan to increase participation by all program offices.

EPA has already realized some internal benefits of the Plan development process since it has helped Agency offices and regions avoid duplication of efforts and identified numerous opportunities for collaboration both within and outside the Agency. As the Plan becomes a more established part of the annual planning cycle, we expect to see more efficient use of compliance assistance resources as it becomes institutionalized across the entire Agency.

2. Make the Plan user friendly and easy to access.

The Agency has made several enhancements to the final FY 01 Compliance Assistance Activity Plan since the release of the draft plan in March 2000. The final Plan includes a summary of the Agency's FY 01 Memorandum of Agreement (MOA) priorities not only for OECA but also for each of the major EPA programs as well (e.g., air, water, waste, etc.). It also provides an easy-to-read table displaying the inventory of compliance assistance activities by industry sector with relevant project-specific information, including a point-of-contact for each. The FYO I Plan project inventory is available electronically on the National Compliance Assistance Clearinghouse located at www.epa.gov/clearinghouse and is searchable by program and regional office. For the FY02 Plan and all future Plans, the projects will also be searchable by geographic area, environmental media, sector and other key factors. In addition, the public can request hard copies of the FYO I Plan through the National Center for Environmental Publications and Information (NCEPI) at 1-800-990-9918. Finally, a complete electronic copy of the Plan will be available on the EPA OECA web site at www.epa.gov/oeca.

3. Develop a long range plan to sustain the Quality of materials in the Clearinghouse.

EPA is committed to providing a comprehensive collection of compliance assistance material and contact information through the Clearinghouse. EPA will employ tools to: ensure that links within the Clearinghouse are current; collect new information; and receive feedback from clients on the quality of the material included in the Clearinghouse. Currently, EPA uses an electronic program to periodically screen the links in the Clearinghouse database to ensure that all links are current. When broken links are detected by this program, EPA will identify the new URL and update the Clearinghouse database. The "Rate a Link", "Comment on a Link", and "Add a Link" features provide EPA user feedback that will help keep the content fresh and useful.

EPA is currently working with its contractor to develop software to electronically collect new material and update the Clearinghouse database. This software, if proven successful, will substantially reduce the cost to expand the Clearinghouse database to include links to documents and sites outside of EPA. EPA is also working internally to automate the collection of new EPA links. Once these programs are in place, EPA will be able to efficiently expand the Clearinghouse database. In addition, the National Center for Manufacturing Sciences (NCMS) has received funding to help EPA expand the Clearinghouse content.

4. Elicit early feedback from stakeholders in the development of future Plans.

In response to this recommendation, the Agency revised the schedule for developing the FY 02 Plan and redesigned its outreach efforts in order to receive stakeholder input prior to preparing future draft Plans. EPA's outreach has included using the National Compliance Assistance Providers Forum, held in March 2001, as a means to receive feedback on proposed compliance assistance activities and priorities prior to drafting the FY 02 Plan. In addition, EPA regional offices and certain program offices have been meeting with compliance assistance providers and other stakeholders to receive feedback on compliance assistance needs. The Agency is committed to engaging stakeholders in the development of all future Plans and will continue to refine and expand its outreach efforts.

5. Develop guidance and tools which go beyond the current "economically significant" criteria used for selecting areas for compliance tools development.

In addition to the compliance guides developed as new rules are promulgated, other compliance assistance tools are developed as part of integrated strategies to address sector-specific problems. Over the past few years, EPA has selected sectors for compliance assistance based on evidence of environmental compliance problems, with a focus on small to medium-size entities. The ten national Compliance Assistance Centers are good examples of tools which emphasize compliance assistance approaches. By eliciting stakeholder input earlier in the planning process, the Agency will be better able to identify areas where compliance assistance is most needed. The Agency will continue its commitment to preparing compliance assistance guides for economically significant rules and rules impacted by the Small Business Regulatory Enforcement Fairness Act. However, the Agency recognizes that the need for compliance assistance extends beyond those criteria. We will continue to work closely with the Agency's media program offices and encourage them to develop compliance assistance tools for other important rules and national program priorities.

OECA has also been working with the CAAC Tools Workgroup which has been considering models that will help the Agency and other compliance assistance providers to develop and deliver tools that are more based on customer needs. We look forward to the CAAC's recommendations, as we work to better direct our compliance assistance efforts.

6. Provide specific guidance to ensure that enforcement and compliance assistance are complementary (not competing) functions.

Over the past several years, EPA and the states have begun to use integrated strategies to improve compliance with environmental requirements. For its FY 02-03 planning cycle, OECA is developing integrated strategies for all appropriate Memoranda of Agreement (MOA) priorities. OECA also is developing a set of principles to guide the development of these integrated compliance assurance strategies to ensure they consider the appropriate use of compliance assistance, compliance incentives, compliance monitoring and enforcement to address compliance problems. As you are aware, integrated strategies were a substantive issue discussed at the Compliance Assistance Forum and included a presentation on the CAAC's draft integration model. We look forward to receiving the CAAC workgroup's recommendations related to integration.

7. **Revisit the definition of compliance assistance and determine whether a broader definition would help institutionalize compliance assistance across the Agency.**

As you requested, we did examine the definition of compliance assistance that the Agency has been using to develop its Compliance Assistance Activity Plan and other tools. We recognize that pollution prevention and other innovative approaches to environmental management can help improve compliance and environmental performance. The use of such approaches remains an important component of the environmental assistance that EPA provides to the regulated community. Our definition allows for these approaches to be considered as compliance assistance as long as they have a regulatory compliance objective associated with them. This definition also is now being used by EPA's Comptroller to track and account for the use of all Agency compliance assistance resources for annual reporting to Congress. We have made the decision to continue using this definition following internal discussions across the agency and with Congressional staff as well. The following is the full text of the Agency's definition of compliance assistance:

" Compliance Assistance includes activities, tools or technical assistance which provide clear and consistent information for 1) helping the regulated community understand and meet its obligations under environmental regulations, - or 2) compliance assistance providers to aid the regulated community in complying with environmental regulations. Compliance assistance may also help the regulated community find cost-effective ways to comply with regulations an/or go "beyond compliance" through the use of pollution prevention, environmental management practices and innovative technologies, thus improving environmental performance. At least one objective of the activity or project must be related to achieving or advancing regulatory compliance. "

The CAAC's recommendations have challenged and encouraged us to improve the Agency's compliance assistance program. While we have done much in response, there remains more that we can accomplish. Your continued assistance will greatly improve our efforts. We have enjoyed working together with the CAAC to address these challenges, and look forward to receiving further input and recommendations from you in the future.

Sincerely,

Michael M. Stahl, Director
Office of Compliance

Attachment 2

Strategic and Tactical Coordination of Environmental Assistance Approaches—A Conceptual Model

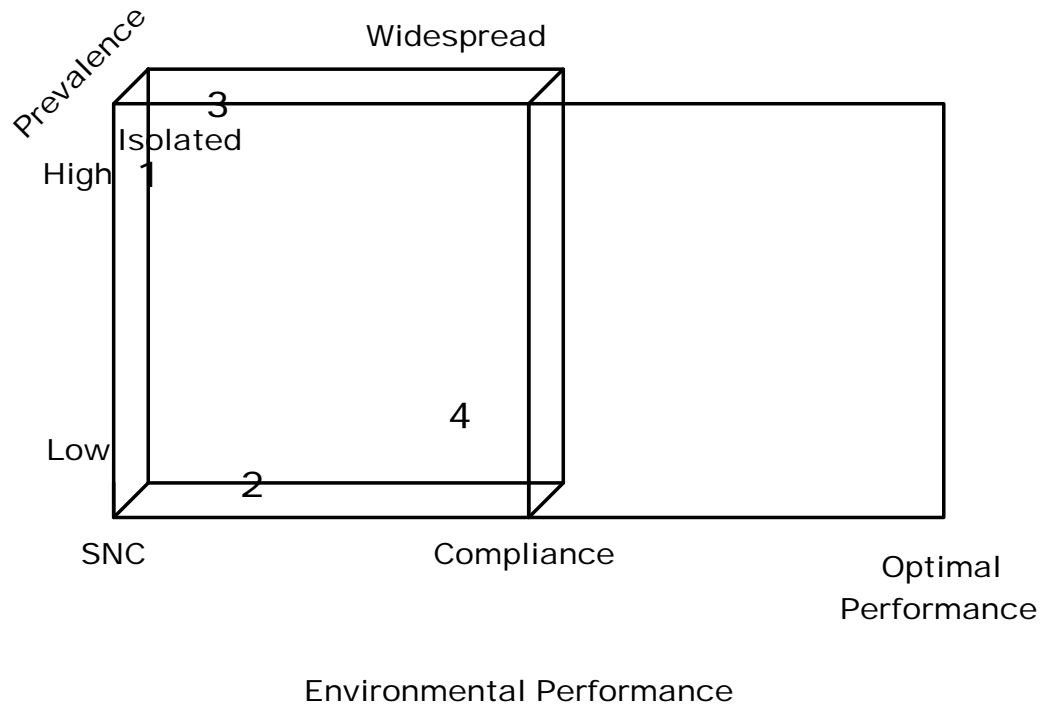
Environmental regulators and compliance assistance providers have developed a variety of approaches for eliciting improved environmental performance from regulated entities. These approaches range from traditional, command-and-control regulations backed by enforcement action and penalties, to voluntary technical assistance programs, to market-based performance incentives. Experience suggests that no single approach is appropriate for the variety of environmental issues being addressed at the national, regional, state and local levels. The critical challenge facing regulators and compliance assistance providers is determining the most efficient and effective combination of these approaches to achieve the desired environmental performance improvement.

Strategic Coordination

At the national, regional, and often state (wholesale) levels, assistance approaches are directed toward commercial or industrial sectors, or aggregate communities facing one or more common environmental issues. These may include issues such as new media or multi-media regulations that impact a target sector (e.g., new effluent limitations and guidelines) or common issues that impact multiple sectors (e.g., ozone non-attainment areas).

At the strategic level, decision makers need to assess the noncompliance characteristics of the *entire* target population when determining the appropriate assistance approach.

The following figure depicts a decision matrix for strategic coordination of traditional enforcement, compliance assistance and market-based incentives. The three axes in the matrix are described below.



X = Environmental Performance

The range for this element is “significant noncompliance” through “compliance” to “optimal performance.”

Y = Environmental Impact

The range for this element is “low” to “high.”

Z = Prevalence

The range for this element is “isolated” to “widespread” within the target sector or community.

It is presumed that this element provides insight into the need for, and effectiveness, of wholesale compliance assistance. Where noncompliance is isolated, it is presumed that the regulatory requirement is easily understood and relatively easy to comply with, or the regulated community has access to compliance assistance sufficient to effectively respond to the regulatory requirement. Conversely, widespread noncompliance is presumed to be indicative of the need for wholesale compliance assistance, due either to the complexity of the regulation and/or the difficulty of achieving compliance.

Six examples of strategic decision-making using this type of matrix are presented below.

1. Significant noncompliance, high environmental impact, isolated occurrence

This scenario suggests that wholesale compliance assistance is already effective at reaching the majority of the regulated community. Additional efforts at compliance assistance will not substantially improve the situation, and the high environmental impact indicates that traditional enforcement action against non-compliers is warranted.

2. Significant noncompliance, low environmental impact, isolated occurrence

This scenario suggests that wholesale compliance assistance is already effective at reaching a majority of the regulated community. Low environmental impact would allow opportunity for retail compliance assistance activities aimed at the isolated non-compliers, as a precursor or in coordination with formal enforcement action.

3. Significant noncompliance, high environmental impact, widespread occurrence

This scenario suggests that wholesale and retail compliance assistance have been ineffective at reaching a majority of the regulated community. High environmental impact indicates that quick, effective enforcement action is also warranted. This situation would best be addressed through formal enforcement action coordinated with follow-up compliance assistance.

4. Significant to occasional noncompliance, low environmental impact, widespread occurrence

This scenario suggests that wholesale and retail compliance assistance have not been effective at reaching a majority of the regulated community. Low environmental impact would allow opportunity for wholesale and retail compliance assistance efforts, with coordinated follow-up enforcement.

5. Compliance or beyond-compliance, high environmental impact (not represented on diagram)

This scenario suggests that the existing regulation is inadequate to achieve the necessary level of environmental protection, and should be revisited.

6. Compliance or beyond-compliance, low environmental impact (not represented on diagram)

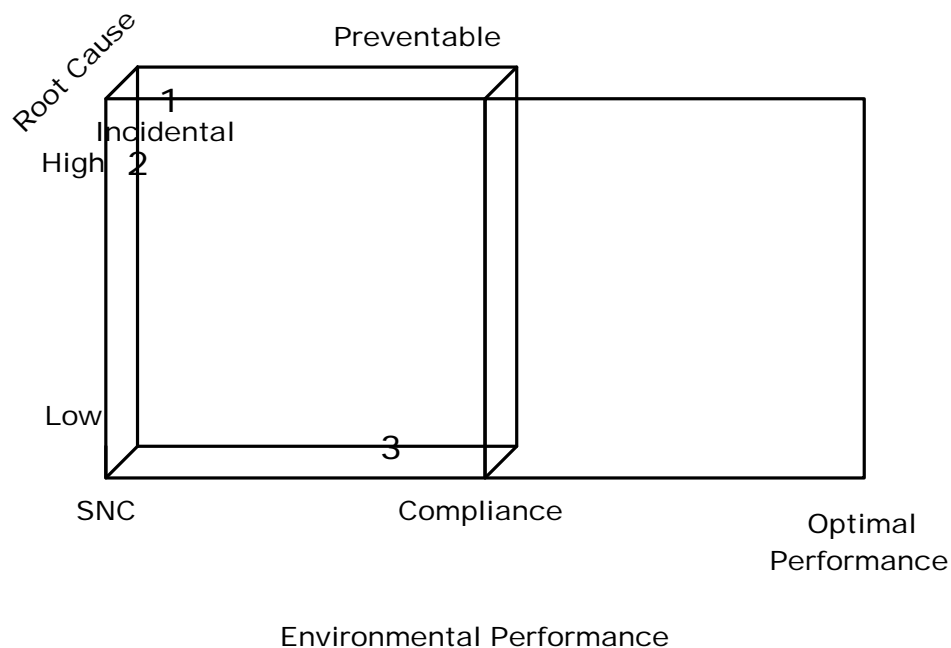
This scenario represents the end-point of the traditional regulatory approach, in which the majority of the regulated community is in compliance

and the environment is protected. Traditional command-and-control approaches cease to be a driver for improved environmental performance, and further gains in environmental performance can only be achieved through voluntary participation programs or market-based incentives.

Tactical Coordination

At the tactical (retail) level, decision makers can use a similar matrix approach to assess the compliance assistance needs of an individual regulated entity. Here, it is the noncompliance characteristics of the individual entity that are evaluated, rather than the characteristics of the larger regulated community.

The following figure depicts a decision matrix for tactical decisions at the retail level. The three axes in the matrix are described below.



X = Environmental Performance

The range for this element is “significant noncompliance” through “compliance” to “optimal performance.”

Y = Environmental Impact

The range for this element is “low” to “high.”

Z = Root Cause

The range for this element is “incidental” to “preventable.”

It is presumed that this element provides insight into the degree to which the individual entity can control the circumstances contributing to noncompliance, and therefore both the entity’s culpability and the likely effectiveness of compliance assistance. Where the entity has adequate prevention measures in place, it is presumed that the noncompliance is incidental, while noncompliance events resulting from a lack of adequate prevention measures should be considered preventable.

Several examples of decision-making at the retail level are discussed below.

1. Significant noncompliance, high environmental impact, preventable

This scenario suggests that the regulated entity is highly culpable formal enforcement action is warranted.

2. Significant noncompliance, high environmental impact, incidental

This scenario suggests that the regulated entity may not have received adequate compliance assistance or may lack adequate technical capacity to have prevented the noncompliance. High environmental impact indicates that immediate action is warranted and enforcement action may be warranted. This situation would best be addressed through prompt compliance assistance coordinated with follow-up enforcement action if noncompliance is not promptly mitigated.

3. Occasional noncompliance, low environmental impact, incidental

This scenario suggests that the regulated entity is willing to comply with its obligations but may lack adequate technical capacity. Low environmental impact would allow opportunity for compliance assistance aimed at the specific noncompliance issue, as a precursor to enforcement action.